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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,481	12/30/2003	Alon D. Meir	P16470	8740
28062	7590	07/28/2005		EXAMINER
		BUCKLEY, MASCHOFF, TALWALKAR LLC		WACHSMAN, HAL D
		5 ELM STREET	ART UNIT	PAPER NUMBER
		NEW CANAAN, CT 06840		2857

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/748,481	MEIR, ALON D.
	Examiner Hal D. Wachsman	Art Unit 2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 December 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) 11-25, 28 and 29 is/are withdrawn from consideration.  
 5) Claim(s) 26 and 27 is/are allowed.  
 6) Claim(s) 1,2 and 5-10 is/are rejected.  
 7) Claim(s) 3 and 4 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 30 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

1. Applicant's election without traverse of species I (claims 1-10, 26, 27) in the reply filed on 6-6-05 is acknowledged.
2. Claims 11-25, 28, 29 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6-6-05.
3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
4. The drawings are objected to because the Figures are labeled/numbered as for example "Figure 1/5" which should be labeled as "Figure 1". The Examiner respectfully notes that it is not necessary to have a second number indicating the total number of figures here. Appropriate correction is required.
5. Claims 1-10, 26 and 27 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 1, lines 2-3, cite "measuring energy incident at a frequency in a frequency spectrum corresponding to a channel but not all frequencies in the frequency spectrum;" however was this intended to indicate that energy is not being measured at all frequencies in the frequency spectrum ? The preamble of claim 1 cites "A method of validating a communication channel" however as the claims is written there is no final conclusion step indicating the validation of the communication channel. The last 2 lines of claim 3 states "...to the frequency corresponding to the edge of the frequency spectrum" however was this intended to be "...to the second frequency corresponding to the edge of the frequency spectrum" ? The preamble of claim 8 cites "A method of

finding a frequency range corresponding to a channel in a signal..." however the end of the claim does not show this frequency range being found. The preamble of claim 26 cites "An article of manufacture..." but an article of manufacture for what exactly is being referred to here ? The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 2 and 5-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Vogel et al. (6,804,262).

As per claim 1, Vogel et al. (Abstract, col. 2 lines 53-67, col. 3 lines 1-8) disclose "measuring energy incident at a frequency ..corresponding to a channel but not all frequencies in the frequency spectrum". Vogel et al. (Abstract, figure 6, col. 13 lines 53-67, col. 14 lines 1-4) disclose "determining whether the energy measured at the frequency exceeds a valid channel threshold".

As per claim 2, Vogel et al. (Abstract, col. 3 lines 13-15, 22-25, 55-59) disclose "determining a bandwidth utilized by the channel". Vogel et al. (see at least abstract) disclose " identifying a channel type having a bandwidth...the bandwidth utilized by the channel".

As per claim 5, Vogel et al. (figures 6, 7, col. 13 lines 2-7) disclose "measuring energy incident..second frequency in the frequency spectrum". Vogel et al. (figures 6, 7) disclose "comparing the energy measured..to the energy measured at the second frequency". Vogel et al. (figure 7) disclose "identifying the channel as carrying analog data...measured at the frequency and the second frequency are disparate" and "identifying the channel as carrying digital data...at the frequency and the second frequency are not disparate".

As per claim 6, Vogel et al. (Abstract, figures 6, 7) disclose the feature of this claim.

As per claim 7, Vogel et al. (Abstract, figures 6, 7) disclose the feature of this claim.

As per claim 8, Vogel et al. (Abstract, col. 2 lines 53-67, col. 3 lines 1-8) disclose "measuring energy existing at two frequencies...corresponding to a bandwidth occupied by a channel". Vogel et al. (Abstract, figure 6, col. 13 lines 53-67, col. 14 lines 1-4) disclose "determining whether at least one of the measured energies exceeds a threshold indicating a channel exists".

As per claim 9, Vogel et al. (figures 6, 7) disclose the feature of this claim.

As per claim 10, Vogel et al. (col. 13 lines 53-57, col. 15 lines 50-55, col. 16 lines 6-29, 40-44) disclose the feature of this claim..

8. Claims 26 and 27 are allowed subject to the appropriate correction of the 37 C.F.R. 1.75(a) objection noted in paragraph 5 above.

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

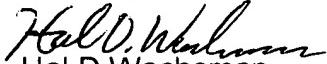
9. The following references are cited as being art of general interest: Zheng (5,477,465) which discloses that the DFT requires much less computation and therefore is often the best choice in designing complex signal detectors, Noga (5,257,211) which discloses an adjustable bandwidth concept signal energy detector, Schmidt et al. (5,939,887) which disclose measuring spectral energy interference in a cable transmission system, Perreault et al. (5,809,427) which disclose channel acquisition in a

communication system and Hsu et al.. (US 2004/0203392 A1) which disclose dynamic adaption of impaired RF communication channels in a communication system.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Hal D Wachsman  
Primary Examiner  
Art Unit 2857

HW  
July 24, 2005